



IN THE EMPLOYMENT TRIBUNAL (SCOTLAND)

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Judgment of the Tribunal in Case No: 4102228/2023 Issued Following Final  
Hearing Heard at Edinburgh on the 31<sup>st</sup> of July 2023

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Employment Judge J G d'Inverno

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Mr T Healy

Claimant  
Represented by:  
Mr Holland, Solicitor

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(1) The Secretary of State for Business (the SoS)  
Insolvency Service

(1<sup>st</sup> Named Respondent)  
Represented by:  
Mr Soni, the  
representative

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(2) Terry Healy Group Limited (in compulsory  
liquidation)  
c

(2<sup>nd</sup> Named Respondent)  
Not appearing and not  
represented

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

At Edinburgh on the 31<sup>st</sup> of July 2023

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(First) On the claimant's representative's Application, made at the bar, the  
1<sup>st</sup> named respondent not objecting, Grants the claimant Leave to Amend his  
ETZ4(WR)

initiating Application ET1 by including therein a claim, already intimated to the Secretary of State, for arrears of wages in terms of section 184 of the Employment Rights Act 1996, in the sum of £1,187.60 gross (£1,000 net) for the period 15<sup>th</sup> June to 18<sup>th</sup> July 2022 inclusive.

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**(Second)** In the period from 03<sup>rd</sup> March 2014 up to and including 30 May 2017 the claimant was not an employee of the 2<sup>nd</sup> respondent, "the Company", in terms of section 230 of the Employment Rights Act 1996 and the claimant's claims, in so far as directed against the 1<sup>st</sup> respondent ("the SoS"), and in so far as relating to that period, are dismissed.

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**(Third)** That in the period from 31<sup>st</sup> May 2017 up to and including the date of liquidation of the 2<sup>nd</sup> respondent, 4<sup>th</sup> August 2022, the claimant was an employee of the 2<sup>nd</sup> respondent, "the Company" in terms of section 230 of the Employment Rights Act 1996 and the claimant's complaints, in so far as directed against the 1<sup>st</sup> respondent, and in so far as relating to that period, succeed.

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## REASONS

1. These claims called for Final Hearing at Edinburgh on the 31<sup>st</sup> of July 2023. The claimant, who appeared and gave oral evidence on his own behalf and answered questions from cross examination was represented by Mr Holland, Solicitor. The 1<sup>st</sup> named respondent, the Secretary of State for Business, ("the SoS") was represented by Mr Soni, lay representative. There was no appearance by or on behalf of the 2<sup>nd</sup> named respondent Terry Healy Group Limited (in compulsory liquidation).

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### Overview

2. In the course of the Hearing the claimant's representative invited the Tribunal to dismiss the claims, insofar as directed against the 2<sup>nd</sup> named respondents and the Tribunal so dismissed.

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3. In this case the claimant is pursuing payment from the National Insurance Fund (“the Fund”) under the provisions of section 166 and or 182 of the Employment Rights Act 1996 (“ERA”), namely redundancy pay, compensatory notice pay and holiday pay.
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4. Although under certain other statutory provisions persons who fall within the definition of worker, in terms of section 230(3) of the ERA, have entitlement to certain benefits including, amongst others, holiday pay, parties’ representatives were agreed, and the Tribunal concurred, that the right to receive the benefits sought arising under sections 166 and or 182 of the Act are enjoyed only by those who fall within the definition of employee in terms of section 230(1).
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5. The essence of the defence pled on behalf of the SoS is that the claimant was not an employee within the meaning of section 230 at the material times, but rather was a self employed person engaged in a contract for the supply of services (that is to say not a Contract of Service) and thus has no entitlement to the sums claimed.
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6. Parties’ representatives were further agreed, in those circumstances, that liability fell to be determined on whether the claimant established, on the balance of probabilities, that he was, at the material times, an employee in terms of section 230 of the 96 Act.
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7. Regarding Quantum of Remedy, parties’ representatives expressed the view that in the event that the Tribunal should determine the principal issue in favour of the claimant, quantification of remedy was a matter which parties anticipated they would be able to agree without Judicial Determination. On that basis, evidence and submissions in the case focused upon the issue of liability leaving over to a separate Hearing, in the event of a failure to agree the same, the issue of Remedy.
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**Sources of Oral and Documentary Evidence**

8. The Tribunal heard evidence on oath from the claimant. Each party lodged a bundle of documents, extending, in the case of the claimant, to some 70  
5 pages and, of the SoS, to some 364, and to some of which reference was made in the course of evidence and submission.

9. The Tribunal found the claimant to be a credible witness and accepted his evidence to the extent that it found it reliable and sufficient to support the  
10 Findings in Fact made.

**Findings in Fact**

10. On the oral and documentary evidence presented, the Tribunal made the  
15 following essential Findings in Fact restricted to those necessary for Determination of the issue.

11. On the 3<sup>rd</sup> of March 2014 the claimant incorporated the 1<sup>st</sup> named  
20 Respondent Company "Terry Healy Group Limited" which Company was placed in liquidation on the 21<sup>st</sup>/22<sup>nd</sup> July 2022.

12. In the period from its first incorporation until the 30<sup>th</sup> of June 2016 the  
25 claimant was the sole Director and held 100% of the shares in the 1<sup>st</sup> respondent.

13. On 30<sup>th</sup> of June 2016 the claimant's spouse, Gail Healy, was appointed as a  
Director of the Company and was allocated 10% of the shareholding, the remaining 90% continuing to be held by the claimant.

30 14. The claimant was at the material time, and is, the majority shareholder in the 1<sup>st</sup> respondent.

15. An extract from the Register of Companies copied and produced at page 49 of the respondent's bundle shows the 1<sup>st</sup> Respondent Company was placed in compulsory liquidation on the 4<sup>th</sup> of August 2022 ("the material date").
- 5 16. The claimant, in his evidence, while agreeing that the Company was placed in liquidation on the 4<sup>th</sup> of August 2022 stated that the liquidation was a members' voluntary, and not a compulsory, liquidation.
17. As at the date of its first incorporation the Company name was "Terron Media Limited". The Company carried on the business of Website Design and Business Lead Generation.
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18. From 2018 onwards, the 1<sup>st</sup> named respondent ("the Company") employed its own construction workforce and reincorporated upon a change of name as "Terry Healy Group Limited".
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19. From 2014 to 2018 the claimant devoted the majority of his working time to work carried out within the Company.
- 20 20. From 2014 to 2016 the claimant received no remuneration from the Company.
21. In that period the claimant sustained himself by unearned income from his residential rental properties.
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22. In 2016 the claimant's wife was appointed a Director and at that time became a part time employee of the Company in terms of an express Contract of Employment.
- 30 23. Other employees of the Company, being largely the construction workforce engaged from 2018, were likewise engaged on express Contracts of Employment.

24. The other employees of the Company were, as at 2018, Ian McManus, Roofing Manager, Stewart Director, Joinery and Building Manager and a number of roofing and building employees and joinery and building employees.
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25. In 2018 the Company employed some 9/11 individuals (excluding the claimant) for whom the claimant exercised overall line management responsibility.
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26. On 31<sup>st</sup> August 2020, a third Director Andrew Lamond was appointed. Mr Lamond resigned as a Director on 14<sup>th</sup> January 2022.
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27. In the period from the date of the Company's first incorporation until the assumption of Gail Healy as a Director and part time employee on 30<sup>th</sup> June 2016, the claimant discharged all duties of a Director and carried out all work within the Company.
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28. In the period 3<sup>rd</sup> March 2014 up to in or about the 1<sup>st</sup> of May 2016 the claimant received no remuneration (wage) or other financial return from the Company. As "founder of the Company", in that period, the claimant's focus was entirely upon allowing the Company to become established and grow by the reinvestment of any income revenue generated in the Company.
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29. In the period 3<sup>rd</sup> March 2014 to 1<sup>st</sup> May 2017, the claimant gave no thought, either in his capacity as Director of the Company or as a potential employee, to the paying by the Company to him of a wage in return for the work which he was carrying out.
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30. In the period 3<sup>rd</sup> March to 1<sup>st</sup> May 2016 the claimant was not subject to the control of any person in the work which he carried out for the Company. In that period he was the only person carrying out work/providing services to the Company. In that period the claimant performed all the duties of Director of the Company.

31. In evidence, the claimant stated that he carried out work on behalf of the Company in that period (in his capacity as founder of the Company) because it was he who had set the Company up).
- 5 32. In the period 3<sup>rd</sup> March 2014 to on or about the 1<sup>st</sup> of May 2017 there was no contract whether express or implied in existence between the claimant and the Company in terms of which the claimant agreed to provide his own work or skill (his personal service) to the Company in return for a wage or remuneration.
- 10 33. On the 30<sup>th</sup> of June 2016, the claimant's wife Gail Healy was assumed as a Director of the Company and separately employed by the Company on a part time basis.
- 15 34. With effect from 30<sup>th</sup> June 2016 the claimant, although still the majority shareholder in the Company was subject to a degree of control in the exercise of his duties by reason of the requirement that he discuss any contentious matters with his fellow Director Gail Healy with a view to their taking mutual decisions.
- 20 35. Following the appointment on 31<sup>st</sup> of August 2020 of Andrew Lamond as an additional Director the degree of control to which the claimant was subject increased by virtue of the requirement to discuss matters and, where possible, reach mutual decisions with the Company's other two Directors.
- 25 36. On or about the 1<sup>st</sup> of May 2017 Gail Healy, in her capacity as a Director of the Company, suggested to the claimant in his capacity as Managing Director that the Company should remunerate him, that is to say pay him a wage in return for the work which he was to carry out for it, particularly so as at that
- 30 time both he and Gail Healy, his fellow Director, had in contemplation the Company acquiring a direct workforce, as employees, to carry out construction work on behalf of clients.

37. Gail Healy proposed and the claimant both in his capacity as Director and as a potential employee agreed to work a 40 hour work for the Company in return for an average gross wage of £1,187 and average net wage of £1,000 per month.

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38. The agreement as to remuneration having been reached between the claimant and the Company, on or about 1<sup>st</sup> May 2017, there was nothing planned or agreed between the Company and the claimant regarding when and whether, if at all, the rate at which he was remunerated would increase in the future.

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39. In the period from on or about the 1<sup>st</sup> of May 2017 until the date of the Company's liquidation, the issue of the claimant's remuneration was never revisited by the Company through the agency of any of its Directors, including the claimant and or by the claimant in his capacity as a potential employee.

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40. In the period from on or around 1<sup>st</sup> May 2017 up to and including the date of the Company's liquidation the rate at which the claimant was remunerated was a rate which fell below the national minimum wage enforced from time to time.

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41. Both the claimant and his fellow Director were unaware that the rate of remuneration agreed between the Company and the claimant on or around 1<sup>st</sup> May 2017, and which remained in place until the date of the Company's liquidation, was a rate less than the national minimum wage applying, from time to time, in that period.

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42. Had the claimant been aware that his rate of remuneration was less than that of the national minimum wage he would have increased his rate of remuneration to that equivalent to the national minimum wage.

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43. In the period from 1<sup>st</sup> May 2017 onwards the claimant paid income tax and employee's National Insurance contributions on the wages which he earned. The Company operated PAYE making deductions in that amount and in



respect of the claimant's employee National Insurance contributions from his gross monthly wage.

- 5 44. From on or around the 1<sup>st</sup> of September 2017, the claimant was eligible for auto enrolment in the NEST Pension Scheme in terms of which the Company would have made "Employer", and would have deducted from the claimant's gross salary "Employee" pension contributions respectively at the rate of 2% and 3%.
- 10 45. The claimant exercised his right to opt out of the NEST Scheme given (a), the relatively modest level of his wages and (b), the fact that he already had in place what he considered to be adequate pension provision.
- 15 46. In the period following on or about 1<sup>st</sup> May 2017 the claimant attended at the workplace every day, met with his fellow Director and, after 14<sup>th</sup> January 2022 his fellow Directors, to discuss the management of the business.
47. The claimant was entitled to and did take some paid leave.
- 20 48. The claimant did not receive any dividend from the Company.
49. The claimant did not have the right to provide a substitute to carry out the duties assumed by and discharged by him which included those of Company Health and Safety Officer, dealing with the financial leasing of the commercial  
25 vehicles used by the Company in the construction services provided by it, website design, advertising on the internet, local radio and with local football clubs except when visiting clients or potential business partners.
- 30 50. In terms of the work which the claimant carried out in the period post 1<sup>st</sup> May 2017, that work continued to constitute personal service.
51. The claimant attended at and discharged its duties from the Company's premises.

52. The claimant was treated by Her Majesty's Revenue and Customs, for PAYE and National Insurance contributions as an employee.

53. The claimant was entitled to paid annual leave.

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54. The claimant's holiday year ran from 1<sup>st</sup> January to 31<sup>st</sup> December. The claimant took a period of 2 weeks paid annual leave in October of 2018. The claimant was allowed to carry over 10 days and take annual leave from a current holiday year to the next holiday year.

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55. In the holiday year to 31<sup>st</sup> December 2022 the claimant did not take any paid holiday.

56. The last day upon which the claimant worked for the Company was 20<sup>th</sup> July 2022.

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57. In the period 3<sup>rd</sup> March 2014 up to on or about the 1<sup>st</sup> of May 2017 (the latter being the date on or about which the claimant was paid a wage by the 1<sup>st</sup> respondent, the claimant was not an employee within the meaning of section 230 of the Employment Rights Act 1996.

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58. In that period and, notwithstanding the incorporated Company's own legal persona the claimant was the embodiment of the Company and was not its servant.

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59. In the period from on or around 1<sup>st</sup> May 2017 up to and including in or around the last week in July 2022 and as at 4<sup>th</sup> August 2022 the claimant was an employee of the 1<sup>st</sup> named Respondent Company (now in liquidation) in terms of section 230 of the Employment Rights Act 1996.

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60. The claimant was not paid for the period 20<sup>th</sup> June to 20<sup>th</sup> July 2022 being a period in which he worked and performed his duties in the normal way.

61. The claimant had no entitlement to contractual notice beyond that implied into his Contract of Employment by the provisions of section 86 of the Employment Rights Act 1996.

5 **Applicable Law, Summary of Submissions, Discussion and Determination**

62. The relevant statutory provisions are to be found in sections 166, 182-188 and section 230 of the Employment Rights Act 1996. These provide respectively as follows:

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**“166 Applications for payments.**

(1) Where an employee claims that his employer is liable to pay to him an employer’s payment and either—

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(a) that the employee has taken all reasonable steps, other than legal proceedings, to recover the payment from the employer and the employer has refused or failed to pay it, or has paid part of it and has refused or failed to pay the balance, or

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(b) that the employer is insolvent and the whole or part of the payment remains unpaid,

the employee may apply to the Secretary of State for a payment under this section.

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(2) In this Part “employer’s payment”, in relation to an employee, means—

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(a) a redundancy payment which his employer is liable to pay to him under this Part,

(aa) a payment which his employer is liable to make to him under an agreement to refrain from instituting or continuing proceedings for a contravention or alleged

contravention of section 135 which has effect by virtue of section 203(2)(e) or (f), or

5 (b) a payment which his employer is, under an agreement in respect of which an order is in force under section 157, liable to make to him on the termination of his contract of employment.

10 (3) In relation to any case where (in accordance with any provision of this Part) an employment tribunal determines that an employer is liable to pay part (but not the whole) of a redundancy payment the reference in subsection (2)(a) to a redundancy payment is to the part of the redundancy payment.

15 (4) In subsection (1)(a) “legal proceedings”—

(a) does not include any proceedings before an employment tribunal, but

20 (b) includes any proceedings to enforce a decision or award of an employment tribunal.

(5) An employer is insolvent for the purposes of subsection (1)(b)—

25 (a) where the employer is an individual, if (but only if) subsection (6), (8ZA) or (8A) is satisfied,

(b) where the employer is a company, if (but only if) subsection (7), (8ZA) or (8A)] is satisfied

30 (c) where the employer is a limited liability partnership, if (but only if) subsection (8), (8ZA) or (8A) is satisfied; and

(d) where the employer is not any of the above, if (but only if) subsection (8ZA) or (8A) is satisfied.

(6) This subsection is satisfied in the case of an employer who is an individual—

5 (a) in England and Wales if—

(i) he has been made bankrupt or has made a composition or arrangement with his creditors, or

10 (ii) he has died and his estate falls to be administered in accordance with an order under section 421 of the Insolvency Act 1986, and

(b) in Scotland if<sup>L</sup>—

15 (i) sequestration of his estate has been awarded or he has executed a trust deed for his creditors or has entered into a composition contract, or

20 (ii) he has died and a judicial factor appointed under section HA of the Judicial Factors (Scotland) Act 1889 is required by that section to divide his insolvent estate among his creditors.

25 (7) This subsection is satisfied in the case of an employer which is a company—

30 (a) if a winding up order has been made, or a resolution for voluntary winding up has been passed, with respect to the company,

(aa) if the company is in administration for the purposes of the Insolvency Act 1986,

5 (b) if a receiver or (in England and Wales only) a manager of the company's undertaking has been duly appointed, or (in England and Wales only) possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge, or

10 (c) if a voluntary arrangement proposed in the case of the company for the purposes of Part 1 of the Insolvency Act 1986 has been approved under that Part of that Act.

(8) This subsection is satisfied in the case of an employer which is a limited liability partnership—

15 (a) if a winding-up order, an administration order or a determination for a voluntary winding-up has been made with respect to the limited liability partnership,

20 (b) if a receiver or (in England and Wales only) a manager of the undertaking of the limited liability partnership has been duly appointed, or (in England and Wales only) possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the limited liability partnership comprised in or subject to the charge, or

25 (c) if a voluntary arrangement proposed in the case of the limited liability partnership for the purpose of Part I of the Insolvency Act 1986 has been approved under that Part of that Act.

30 (8ZA) This subsection is satisfied in the case of an employer if—

(a) the employer is a legal person,

(b) a request has been made for the first opening of collective proceedings—

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(i) based on the insolvency of the employer, as provided for under the law of any part of the United Kingdom, and

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(ii) involving the partial or total divestment of the employer's assets and the appointment of a liquidator or a person performing a similar task, and

(c) any of the following has decided to open the proceedings—

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(i) a court,

(ii) a meeting of creditors, or

(iii) the creditors by a decision procedure.

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(8A) This subsection is satisfied in the case of an employer if—

(a) a request has been made for the first opening of collective proceedings—

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(i) based on the insolvency of the employer, as provided for under the laws, regulations and administrative provisions of a member State, and

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(ii) involving the partial or total divestment of the employer's assets and the appointment of a liquidator or a person performing a similar task, and

(b) the competent authority has—

- (i) decided to open the proceedings, or
- (ii) established that the employer's undertaking or business has been definitively closed down and the available assets of the employer are insufficient to warrant the opening of the proceedings.

(8B) For the purposes of [F18this section]—

(a) “liquidator or person performing a similar task” includes the official receiver or an administrator, trustee in bankruptcy, judicial factor, supervisor of a voluntary arrangement, or person performing a similar task,

(b) “competent authority” includes—

- (i) a court,
- (ii) a meeting of creditors,
- (iii) a creditors' committee,
- (iv) the creditors by a decision procedure, and
- (v) an authority of a member State empowered to open insolvency proceedings, to confirm the opening of such proceedings or to take decisions in the course of such proceedings.

(8C) An employee may apply under this section only if he or she worked or habitually worked in Great Britain in that employment to which the application relates.



(9) In this section—

(a) references to a company are to be read as including references to a charitable incorporated organisation, and

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(b) any reference to the Insolvency Act 1986 in relation to a company is to be read as including a reference to that Act as it applies to charitable incorporated organisations.

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**182 Employee's rights on insolvency of employer.**

If, on an application made to him in writing by an employee, the Secretary of State is satisfied that—

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(a) the employee's employer has become insolvent,

(b) the employee's employment has been terminated, and

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(c) on the appropriate date the employee was entitled to be paid the whole or part of any debt to which this Part applies,

the Secretary of State shall, subject to section 186, pay the employee out of the National Insurance Fund the amount to which, in the opinion of the Secretary of State, the employee is entitled in respect of the debt.

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**183 Insolvency.**

(1) An employer has become insolvent for the purposes of this Part—

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(a) where the employer is an individual, if (but only if) subsection (2), (4ZA) or (4A)] is satisfied,

(b) where the employer is a company, if (but only if) subsection (3), (4ZA) or (4A) is satisfied

5 (c) where the employer is a limited liability partnership, if (but only if) subsection (4), (4ZA) or (4A)] is satisfied; and

(d) where the employer is not any of the above, if (but only if) subsection (4ZA) or (4A) is satisfied.

10 (2) This subsection is satisfied in the case of an employer who is an individual—

(a) in England and Wales if—

15 (ai) a moratorium period under a debt relief order applies in relation to him,

20 (i) he has been made bankrupt or has made a composition or arrangement with his creditors, or

25 (ii) he has died and his estate falls to be administered in accordance with an order under section 421 of the Insolvency Act 1986, and

(b) in Scotland if—

30 (i) sequestration of his estate has been awarded or he has executed a trust deed for his creditors or has entered into a composition contract, or

- (ii) he has died and a judicial factor appointed under section 11A of the Judicial Factors (Scotland) Act 1889 is required by that section to divide his insolvent estate among his creditors.

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(3) This subsection is satisfied in the case of an employer which is a company—

(a) if a winding up order has been made, or a resolution for voluntary winding up has been passed, with respect to the company,

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(aa) if the company is in administration for the purposes of the Insolvency Act 1986,

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(b) if a receiver or (in England and Wales only) a manager of the company's undertaking has been duly appointed, or (in England and Wales only) possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge, or

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(c) if a voluntary arrangement proposed in the case of the company for the purposes of Part I of the Insolvency Act 1986 has been approved under that Part of that Act.

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(4) This subsection is satisfied in the case of an employer which is a limited liability partnership—

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(a) if a winding-up order, an administration order or a determination for a voluntary winding-up has been made with respect to the limited liability partnership,

5 (b) if a receiver or (in England and Wales only) a manager of the undertaking of the limited liability partnership has been duly appointed, or (in England and Wales only) possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the limited liability partnership comprised in or subject to the charge, or

10 (c) if a voluntary arrangement proposed in the case of the limited liability partnership for the purposes of Part I of the Insolvency Act 1986 has been approved under that Part of that Act.

(4ZA) This subsection is satisfied in the case of an employer if—

15 (a) the employer is a legal person,

(b) a request has been made for the first opening of collective proceedings—

20 (i) based on the insolvency of the employer, as provided for under the law of any part of the United Kingdom, and

25 (ii) involving the partial or total divestment of the employer's assets and the appointment of a liquidator or a person performing a similar task, and

(c) any of the following has decided to open the proceedings—

30 (i) a court,

(ii) a meeting of creditors, or

(iii) the creditors by a decision procedure.]

(4A) This subsection is satisfied in the case of an employer if—

(a) a request has been made for the first opening of collective proceedings—

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(i) based on the insolvency of the employer, as provided for under the laws, regulations and administrative provisions of a member State, and

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(ii) involving the partial or total divestment of the employer's assets and the appointment of a liquidator or a person performing a similar task, and

(b) the competent authority has—

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(i) decided to open the proceedings, or

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(ii) established that the employer's undertaking or business has been definitively closed down and the available assets of the employer are insufficient to warrant the opening of the proceedings.

(4B) For the purposes of [F16this section]—

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(a) "liquidator or person performing a similar task" includes the official receiver or an administrator, trustee in bankruptcy, judicial factor, supervisor of a voluntary arrangement, or person performing a similar task,

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(b) "competent authority" includes—

(i) a court,

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- (ii) a meeting of creditors,
  - (iii) a creditors' committee,
  - (iv) the creditors by a decision procedure, and
  - (v) an authority of a member State empowered to open insolvency proceedings, to confirm the opening of such proceedings or to take decisions in the course of such proceedings.
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(4C) An employee may apply under section 182 (employee's rights on insolvency of employer) only if he or she worked or habitually worked in England, Wales or Scotland in that employment to which the application relates.

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(5) In this section—

- 20
- (a) references to a company are to be read as including references to a charitable incorporated organisation, and
  - (b) any reference to the Insolvency Act 1986 in relation to a company is to be read as including a reference to that Act as it applies to charitable incorporated organisations.
- 25

**184 Debts to which Part applies.**

(1) This Part applies to the following debts—

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- (a) any arrears of pay in respect of one or more (but not more than eight) weeks,

(b) any amount which the employer is liable to pay the employee for the period of notice required by section 86(1) or (2) or for any failure of the employer to give the period of notice required by section 86(1),

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(c) any holiday pay—

(i) in respect of a period or periods of holiday not exceeding six weeks in all, and

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(ii) to which the employee became entitled during the twelve months ending with the appropriate date,

(d) any basic award of compensation for unfair dismissal or so much of an award under a designated dismissal procedures agreement as does not exceed any basic award of compensation for unfair dismissal to which the employee would be entitled but for the agreement, and

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(e) any reasonable sum by way of reimbursement of the whole or part of any fee or premium paid by an apprentice or articled clerk.

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(2) For the purposes of subsection (1)(a) the following amounts shall be treated as arrears of pay—

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(a) a guarantee payment,

(b) any payment for time off under Part VI of this Act or section 169 of the Trade Union and Labour Relations (Consolidation) Act 1992 (payment for time off for carrying out trade union duties etc.),

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(c) remuneration on suspension on medical grounds under section 64 of this Act and remuneration on suspension on maternity grounds under section 68 of this Act, and

5 (d) remuneration under a protective award under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992.

(3) In subsection (1)(c) “holiday pay”, in relation to an employee, means—

10 (a) pay in respect of a holiday actually taken by the employee, or

(b) any accrued holiday pay which, under the employee’s contract of employment, would in the ordinary course have become payable to him in respect of the period of a holiday if his employment with the employer had continued until he became entitled to a holiday.

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(4) A sum shall be taken to be reasonable for the purposes of subsection (1)(e) in a case where a trustee in bankruptcy, or (in Scotland) a trustee or interim trustee in the sequestration of an estate under the Bankruptcy (Scotland) Act 2016, or liquidator has been or is required to be appointed—

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(a) as respects England and Wales, if it is admitted to be reasonable by the trustee in bankruptcy or liquidator under section 348 of the Insolvency Act 1986 (effect of bankruptcy on apprenticeships etc.), whether as originally enacted or as applied to the winding up of a company by rules under section 411 of that Act, and

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(b) as respects Scotland, if it is accepted by the trustee or interim trustee or liquidator for the purposes of the sequestration or winding up.

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185 **The appropriate date.**

In this Part “the appropriate date”—

5 (a) in relation to arrears of pay (not being remuneration under a protective award made under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992) and to holiday pay, means the date on which the employer became insolvent,

10 (b) in relation to a basic award of compensation for unfair dismissal and to remuneration under a protective award so made, means whichever is the latest of—

15 (i) the date on which the employer became insolvent,

(ii) the date of the termination of the employee’s employment, and

(iii) the date on which the award was made, and

20 (c) in relation to any other debt to which this Part applies, means whichever is the later of—

25 (i) the date on which the employer became insolvent, and

(ii) the date of the termination of the employee’s employment.

30 186 **Limit on amount payable under section 182.**

(1) The total amount payable to an employee in respect of any debt to which this Part applies, where the amount of the debt is referable to a period of time, shall not exceed —

(a) £643 in respect of any one week, or

5 (b) in respect of a shorter period, an amount bearing the same proportion to £643 as that shorter period bears to a week.

(2).....

**187 Role of relevant officer.**

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(1) Where a relevant officer has been, or is required to be, appointed in connection with an employer’s insolvency, the Secretary of State shall not make a payment under section 182 in respect of a debt until he has received a statement from the relevant officer of the amount of that debt which appears to have been owed to the employee on the appropriate date and to remain unpaid.

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(2) If the Secretary of State is satisfied that he does not require a statement under subsection (1) in order to determine the amount of a debt which was owed to the employee on the appropriate date and remains unpaid, he may make a payment under section 182 in respect of the debt without having received such a statement.

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(3) A relevant officer shall, on request by the Secretary of State, provide him with a statement for the purposes of subsection (1) as soon as is reasonably practicable.

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(4) The following are relevant officers for the purposes of this section—

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(a) a trustee in bankruptcy or a trustee or interim trustee (within the meaning of the Bankruptcy (Scotland) Act 2016),

(b) a liquidator,

(c) an administrator,

(d) a receiver or manager,

5 (e) a trustee under a composition or arrangement between the  
employer and his creditors, and

(f) a trustee under a trust deed for his creditors executed by the  
employer.

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(5) In subsection (4)(e) “trustee” includes the supervisor of a voluntary  
arrangement proposed for the purposes of, and approved under, Part I or  
VIII of the Insolvency Act 1986.

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### **188 Complaints to employment tribunals.**

(1) A person who has applied for a payment under section 182 may present  
a complaint to an employment tribunal]—

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(a) that the Secretary of State has failed to make any such payment,  
or

(b) that any such payment made by him is less than the amount  
which should have been paid.

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(2) An employment tribunal shall not consider a complaint under subsection  
(1) unless it is presented—

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(a) before the end of the period of three months beginning with the  
date on which the decision of the Secretary of State on the  
application was communicated to the applicant, or

(b) within such further period as the tribunal considers reasonable in a case where it is not reasonably practicable for the complaint to be presented before the end of that period of three months.

5 (3) Where an employment tribunal finds that the Secretary of State ought to make a payment under section 182, the tribunal shall—

(a) make a declaration to that effect, and

10 (b) declare the amount of any such payment which it finds the Secretary of State ought to make.

### **230 Employees, workers etc.**

15 (1) In this Act “employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

(2) In this Act “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

20 (3) In this Act “worker” (except in the phrases “shop worker” and “betting worker”) means an individual who has entered into or works under (or, where the employment has ceased, worked under)—

(a) a contract of employment, or

25 (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

30

and any reference to a worker’s contract shall be construed accordingly.

- (4) In this Act “employer”, in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.”

## 5 Case Authority

63. Between them parties’ representatives referred the Tribunal to the following authorities:

- io 1 **Secretary of State for Business, Enterprise and Regulatory Reform v Neufeld and anor** [2009] IRLR 475 CA
- 2 **Clark v Clark Construction Initiatives Ltd and anor** [2008] IRLR 364
- 3 **Autoclenz Limited v Belcher and others** [2011] UKSC 41
- 15 4 **Ready Mixed Concrete (South East) Ltd v Ministry of Pensions and National Insurance** [1968] 2 QB 497
- 5 **Nesbitt and anor v Secretary of State for Trade and Industry** [2007] IRLR 847
- 6 **White and Another v Troutbeck SA** [2013] EWC civ 1171
- 20 7 **Robert Stack v Ajar-Tec LLP** [2015] EWCA civ 46
- 8 **Secretary of State for Business, Innovation and Skills v Mrs P Knight** UKEAT/0073/13/RN
- 9 **Nethermere St Neots Limited** [1984] IRLR 240
- 10 **Eaton (Appellant) v 1 Robert Eaton Limited and 2 Secretary of State for Employment (Respondents)** [1988] IRLR 83
- 25 11 **Fleming (Appellant) v Secretary of State for Trade and Industry (Respondent)** [1997] IRLR 682 (First Division of the Inner House)
- 12 **Rainford v Dorset Aquatics Limited** EAT 18<sup>th</sup> November, 8<sup>th</sup> December 2021
- 30 13 **Dougdale v DDE Law Limited** UKEAT/0169/16/LA 4<sup>th</sup> May, 4<sup>th</sup> July 2017

14 **Rajah v Secretary of State for Employment** EAT/1 25/96, 7<sup>th</sup>  
July 1995 per Mummery J (P) as he then was

5 64. The Tribunal found parties' representatives' respective analysis of the  
authorities to be informative including, in particular, the case of the **Secretary  
of State for the Berr v Neufeld and another**, upon which both parties'  
representatives placed emphasis.

10 65. Each of the parties' representatives had prepared, exchanged and lodged  
with the Tribunal, a written submission cross referenced to relevant statutory  
provisions and case law. These included a comprehensive review of the  
relevant authorities and, their content being known to both parties and the  
Tribunal, they are not rehearsed at length here.

#### 15 **The Issue**

20 66. The issue for determination before the Tribunal was whether the claimant  
was, at the relevant time that is as at the date of the Company's liquidation,  
04 August 2022 and if so from what earlier date for the purposes of  
quantification of remedy, an "Employee of the Company" within the meaning  
of section 230 of the ERA 1996.

#### **The Claimant's Representative's Submission**

25 67. Under reference to the case of **Secretary of State for Berr Neufeld** the  
claimant's representative submitted:-

30 (a) The fact that the claimant's shareholding control of the Company  
should not be regarded as ordinarily relevant to his employment  
status.

(b) Nor that he may have, as in this case, made loans to or have  
capital invested in the Company.

- (c) Or that he has done any of the things/performed any of the duties that an owner would normally do and or perform.

- 5 68. The starting point was, in his submission, that the fact that the claimant was the founder and dominant force of and in the Company should not influence the consideration of the usual factors in determining his employment status, or, of themselves, operate as a bar to his being found to be an employee.
- 10 69. The matter should be approached by the application of the traditional tests and factors the claimant being the majority shareholder in the Company was not something that was fundamentally incompatible with his simultaneously being an employee.
- 15 70. This was not a case in which any question of a sham contract arose. The question to be asked and answered is what was the agreement, if any, between the parties that was a question of fact (**Autoclenz Limited v Belcher and others**).
- 20 71. When applying all of the factors it was the "multiple" of mixed tests rather than one single test that fell to be applied.
- 25 72. The starting point and what remained the key test for the identification of a Contract of Service using the mixed test was that was approved in **Ready Mixed Concrete (South East) Limited v Ministry of Pensions and National Insurance** namely does:-
- 30 (a) An agreement exists to provide the servant's own worker skill (personal service) in return for a wage or remuneration.
- (b) Was there mutuality of obligation.
73. The claimant had performed all of the tasks that might be expected of a Managing Director working as a full time employee. These had included:-

- Chairing committees
- Functioning as Director of Operations
- 5 • Functioning as the Company's HR Officer. Dealing with insurance, marketing, liaison with other Directors and external agencies; and,
- Engaging in the day to day activities of managing staff and discharging Line Manager responsibility.
- 10 • These duties were discharged, submitted the claimant's representative, at least post May 2017, in return for a wage paid through PAYE and after deduction of National Insurance contributions.

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74. The claimant's representative submitted that the fact that for an initial period of 3 years following the Company's incorporation and operation the claimant did not receive a salary was not fatal to a finding that he was nevertheless an employee.

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75. The claimant's representative prayed in aid of that proposition the cases of:-

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- **Secretary of State for Berr v Neufeld** commenting upon the case of **Fleming v the Secretary of State for Trade and Industry**

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- **Robert Stack v Ajar-Tec LLP**, where at paragraph 50 it was said *"As to his not drawing his salary .... if he was contractually entitled to it, the fact that he did not take it could not retrospectively diminish his right..."*
- **Robert Stack v Ajar-Tec LLP**, where the fact that a Director and shareholder had worked without pay for 3 years did not stop him being an employee



- **The Secretary of State for Business, Innovation Skills v Mrs Knight**, where the claimant took no pay for 2 years in order to keep the Company afloat

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76. Neither, submitted the claimant's representative did the fact that when the claimant began to be paid and receive a wage that that wage was below the applicable national minimum wage operate to remove employment status.

10 77. In relation to control, and under reference to **Dougdale v DDE Law Limited**, the claimant's representative submitted that the fact that a majority shareholder could ultimately exercise control over the Company was not mutually incompatible with a Company controlling him in the discharge of his duties as an employee. Thus, control in the context of the majority shareholder employee could be seen to be a less weighty factor.

15

78. In the claimant's representative's submission, there was evidence of a sufficient element of control in the relationship such as to satisfy that element of the mixed test.

20

79. Otherwise, submitted the claimant's representative, factors existed which were consistent with the presence of a Contract of Service namely;

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- The service provided by the claimant was personal service. He did not provide, nor was there any arrangement by which he would have been able to provide a substitute.

30

- As to the master and servant relationship, in a small Company where senior Directors discharged their own duties without direct supervision, it was wrong to treat the absence of day to day control as the determinable factor (see *White and another v Troutbeck SA* [2013] EWCA Civ 1171

80. As to mutuality of obligation, it was clear that the Company provided work and equally clear that Mr Healy accepted that work and performed it. Additionally, the fact that; the claimant took holidays and was paid while on holiday, that he was paid through the payroll with PAYE being operated, that he was integrated within the organisation discharging management responsibility, at least from in or about May 2017, were all factors which pointed towards the existence of a Contract of Service.

81. In conclusion, the claimant's representative invited the Tribunal to hold that the claimant was, at the relevant time, namely the date of liquidation of the Company, an Employee of the Company, within the meaning of section 230 of the ERA and had so been from the date of the Company's incorporation.

#### **Submissions for the Respondent**

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82. The respondent's representative accepted at the outset that there was no reason in principle why a person who was a Director and shareholder of a Company could not also simultaneously be an employee of the same Company under a Contract of Employment.

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83. Under reference to **The Secretary of State v Neufeld**, he submitted that whether a person was in any particular case was a question of fact to be determined by the Tribunal on the evidence and, upon the evidence before the Tribunal in the instant case he invited the Tribunal to conclude that the claimant was not an employee.

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#### **Relevant Factors**

84. He likewise acknowledged that a relevant factor would be whether there was in existence a genuine Contract of Employment and whether any such Contract was a sham.

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85. While recognising, as per the EAT in **The Secretary of State v Knight** that consideration can come in many forms, on the claimant's own evidence the

Secretary of State's representative urged the Tribunal to find that the claimant was not in receipt of any consideration, at least prior to some time in the late spring/early summer of 2017 at the earliest.

5 86. Unlike all other employees and Directors of the Company the claimant, at no time, had held a written Contract of Employment describing himself rather, as a person who had "set up the Company".

10 (a) He had been paid no wage for the work carried out by him prior to in or about the late spring/early summer of 2017, at the earliest.

15 (b) On the claimant's own evidence from the 3 year period prior to that, that is from the date of incorporation 3<sup>rd</sup> March 2014, the claimant had given no thought to seeking or receiving a wage or other remuneration, whether by wage or dividend, because he had set the Company up and wished to see it grow.

20 (c) He had another source of unearned income by which he was able to and did sustain himself.

25 87. From the date upon which he was first paid a wage, again on the claimant's own evidence, that wage was paid at an hourly rate of £7.01, that is to say at all times paid at a rate below the applicable national minimum wage.

88. The proposal that he receive a wage was not his but rather his wife's who was an employee and, with effect from 30<sup>th</sup> June 2016, a fellow employee.

30 89. At the time when his fellow Director proposed and he agreed to accept a wage there was, to quote the claimant's own words as per his Director's questionnaire completed on 22<sup>nd</sup> August 22 "*Nothing planned*" regarding when/whether the rate at which he was paid would increase in the future. He did not receive any wages for the last month immediately preceding the Company's liquidation.

90. The claimant, he submitted,

5 (a) had taken no holidays in the preceding 2 years albeit he had taken some holiday on another occasion.

(b) He had no sick pay arrangements and no contractual or express terms of notice of dismissal.

10 (c) He confirmed that he operated a Director's loan account and was owed approximately £155,000 by the Company as at the date of insolvency.

15 (d) He had provided personal guarantees in relation to debts of the Company.

91. The respondent's representative commended to the Tribunal the approach approved in **Autoclenz Limited v Belcher** namely *"Where there is a dispute as to the genuineness of a written term in an employment contract, the focus of the enquiry must be to discover the actual legal obligations of the parties. All the relevant evidence must be examined including: the written term itself read in context of the whole agreement; how the parties conduct themselves in practice and their expectations of each other"*. Although this was a case where no written contract existed the approach was, in his submission  
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25 equally applicable.

92. While there was no single test for determining whether an individual was an employee for the purposes of section 230(1) with each case depending on its own facts, there was however an "irreducible minimum without which there can be no Contract of Employment That minimum comprised:-  
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- Mutuality of obligation - that is the obligation on the employer to provide work and on the employee to accept and perform the work of the employer

- Control - put simply that ultimate authority over the purported employee in the performance of his or her work must rest with the employer; and

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- Personal service - the employee must be obliged to perform the work personally subject to a limited power of delegation

93. Under reference to **Neufeld** at paragraph 88 the respondent's representative reminded the Tribunal that the onus of proof sits with the claimant *"in cases where the putative employee asserts the existence of an employment contract, it will be for him to prove it."*

94. The essential requirements for a genuine Contract of Employment were summarised by McKenna J in **Ready Mixed Concrete v Minister of Pensions and National Insurance** these being:-

- The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service of his master
- The servant agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make the other master; and
- The other provisions of the Contract are consistent with it being a Contract of Service

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95. Those requirements were subsequently approved in several cases including **Nethemere (St Neots) Limited v Gardiner** where Stevenson LJ said *"There must, in my judgment be an irreducible minimum of obligation on each side to create a Contract of Service"*. Under reference to the case of **Eaton v Robert Eaton Limited** and The Secretary of State the respondent's representative reminded the Tribunal that a Director of a Company is

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normally the holder of an office, not an employee and while the two were not mutually exclusive, evidence is required to establish that the Director was in fact also employed". Relevant factors include whether there was an express Contract of Employment or a Board Minute or Written Memorandum constituting an agreement and or whether the individual was under the control of a Board of Directors. In this case there was no Board of Directors for a substantial period of time nor any Written Memorandum.

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96. The respondent's representative invited the Tribunal to hold, on the evidence presented, that the claimant, certainly prior to in or about May/June 2017 was not subject to any control or guidance including not subject to any disciplinary process. He was not receiving a wage at all and thereafter never received a wage in an amount equivalent to the national minimum wage, that no Contract of Employment whether verbal and express or implied existed.

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97. Under reference to **Fleming v The Secretary of State**, he submitted that the fact that an individual is a majority shareholder in a Company will always be a relevant factor and may be decisive. The claimant in this case had always been the majority shareholder.

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25  
98. Under reference to the case of **Raja v The Secretary of State**, the respondent's representative reminded the Tribunal that the relevant date for the purposes of deciding whether the Secretary of State is liable to make payments out of the National Insurance Fund to employees of an insolvent Company, is the date at which the Company became insolvent and not the position as it was 2, 5 or 10 years previously.

30  
99. The definition of employee in terms of section 230 of the ERA was the same as that which appeared in section 54 of the National Minimum Wages Act. As the claimant was never paid the national minimum wage the fact that he received a wage at all was something to which less weight should be attributed.

100. The respondent's representative concluded by inviting the Tribunal to hold that as at the relevant date, that is to say the date which the Company was wound up, namely 4<sup>th</sup> August 2022, the claimant was not an employee for the purposes of section 230 of the ERA and accordingly, the Secretary of State had no liability to make payment out of the National Insurance Fund in respect of any of the claimant's claims.

### Discussion and Disposal

101. Upon a consideration of the factors presented in evidence, and on balancing those which pointed to, with those which pointed away from the existence of a Contract of Service, and on application of the mixed test, I was satisfied as to the presence that the irreducible minima of, mutuality of obligation control (in a sufficient degree) and of personal service, all such as to satisfy the **Ready Mixed Concrete** test - namely that an agreement existed to provide the claimant's own work or skill in return for a wage or remuneration, in the period from on or about the 1<sup>st</sup> of June 2017 up to and as at the relevant date, namely the date upon which the Company was wound up being 4<sup>th</sup> August 2022.

102. In so concluding, I accepted the claimant's representative's submissions that in shareholder/employee situations in small companies, a lesser degree of control may suffice. I also accepted the claimant's representative's submissions that,

- (a) whereas a failure on the part of the Company and its Directors to make payment to the claimant, as a potential employee, of a national minimum wage may give rise to certain penalties and remedies under other legislation, that while it might separately amount to a breach of an implied term in the Contract of Employment, it did not, of itself, vitiate or discharge an otherwise valid Contract; and,

(b) the national minimum wage point that the claimant having a contractual right to receive wages in consideration of the work carried out by him in the last month prior to the Company's winding up, the fact that he did not draw, or deferred the taking of, those wages in that month did not operate to discharge the Contract of Employment and thus I held that as at the relevant date the claimant was an employee for the purposes of section 230(1) of the Employment Rights Act 1996.

103. I was not so satisfied in respect of the initial 3 year period from the date of incorporation of the Company namely 3<sup>rd</sup> March 2014 up to and including the point in or about end May/beginning June 2017, at which the Company began to pay the claimant a wage. In relation to this period I accepted the claimant's representative's submissions based upon **SoS for Berr and Neufeld** in relation to control, namely; the fact that the claimant remained the sole governing Director for the majority of that period and the 90% shareholding Director for the balance, control would be and was exercised by him as the Company's agent, that the Company had a distinct legal persona once incorporated and the close identity that in reality existed between the Company and the claimant did not, of itself, prevent the Contract for Service being created.

104. In relation to the non payment of salary however I found the facts in the instant case to be distinguishable from those which appear to have pertained in the case of **Neufeld**.

105. What is said by their Lordships at paragraph 51 of **Neufeld** is:-

*"51 As to his not drawing his salary, we can see that it would point against the existence of a Contract of Employment if his remuneration had been generally irregular. But we find it difficult to see how it could be concluded that he was not entitled to the payment of a salary if it had been paid with regularity until the final*



*month: and if he was contractually entitled to it (my emphasis) the fact that he did not take it could not retrospectively diminish his right.”*

106. As this has been found in fact, there was no evidence before the Tribunal that  
5 went to establish a contractual entitlement on the part of the claimant to wages prior to his newly appointed fellow Director’s proposal, in or around May/June 2017, that he be paid a salary of £1,000 net per month and his agreement to accept such a salary. *Per contra*, the claimant’s evidence which I accepted as both credible and reliable in this regard, was that the  
10 question of his receiving a wage for the work carried out by him in the initial 3 year period was one which simply did not arise in his mind either in his capacity as a Director of the Company or in his capacity as a potential employee. Rather, he was clear that he carried out this work without looking for remuneration because he was the founder of the Company and wished to  
15 see it grow and succeed.

107. Regarding onus of proof, in the case of **Clark v Clark Construction Initiatives Ltd**, to which the Tribunal was referred, suggests the consideration of a number of factors which, while not exhaustive it is said  
20 may be of assistance. These however relate to the determining the question of whether a Tribunal should give effect to an ostensible Contract of Employment or not.

108. At paragraph 98(1) of **Clark** states *“Where there is a Contract ostensibly in  
25 place, the onus is on the party seeking to deny its effect to satisfy the Court that it is not what it appears to be. This is particularly so where the individual has paid tax and National Insurance as an employee; he has on the face of it earned the right to take advantage of the benefits which employees may derive from such payments.”* In the instant case, prior to the agreement to pay and receive wages, there was no contract of any sort ostensibly in place  
30 between the Company on the one hand and the claimant on the other in the capacity of a potential employee and thus, as per Neufeld at paragraph 88 I considered, in relation to that initial 3 year period the case was one where the putative employee namely the claimant was asserting the existence of an

employment contract and that the onus of proof sat with him to establish it and that he had failed to discharge it.

109. For the above reasons I find that in the period from the date of its  
5 incorporation up to the 30<sup>th</sup> of May 2017 the claimant was not an employee of the Respondent Company in terms of section 230 of the Act and that the Secretary of State has no liability to make payment in respect of the claimant's claims, insofar as they relate to that period.

110. I find that at the relevant date 4<sup>th</sup> August 2022 the claimant was an employee  
10 of the Respondent Company in terms of section 230 of the Employment Rights Act 1996 and had so been from on or about the 30<sup>th</sup> May 2017 and that the Secretary of State is accordingly liable to make payment to the claimant in respect of his claims insofar as they relate to that period.

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111. In so identifying a commencement date for the period of employment I do so  
upon an acceptance, as credible and sufficiently reliable, of the evidence of  
the claimant. Although no documentary evidence vouching that date was  
placed before the Tribunal and not least any written Contract of Employment,  
20 I accepted the claimant's oral evidence, which was not seriously challenged  
in cross examination in this regard, that it was at or about the end of  
May/beginning of June 2017 that his wife who had been assumed as a  
Director of the Company in the preceding year first proposed and he agreed  
that he be remunerated for the work carried out by him at a net rate of £1,000  
25 a month with effect from that time.

112. Parties' representatives were in agreement that in the event that the Tribunal  
should hold that the claimant was an employee for all or part of the period in  
respect of which he has made claims upon the National Insurance Fund, the  
30 quantum of the amounts due to be paid under each Head of Claim should be  
capable of agreement between the parties. Accordingly, the Tribunal does  
not bear to quantify the sums due in terms of this Judgment. Parties will  
remain at liberty, in the event that they are unable to agree quantum to make

Application, in accordance with the Rules for the fixing of a subsequent Remedies Hearing.

5        **Employment Judge:        J d'Inverno**  
         **Date of Judgment:        22 August 2023**  
         **Entered in register:        24 August 2023**  
         **and copied to parties**

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**I confirm that this is my Judgment in the case of Healy v The Secretary of State for Business and others and that I have signed the Judgment by electronic signature.**

